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8
9 **BEFORE THE**
STATE BOARD OF OPTOMETRY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. CC-2010-168

12 **MAI-ANH CHTN NGUYEN**
13 **1661 Burdette Drive, Suite H**
14 **San Jose, CA 95121-1681**

A C C U S A T I O N

15 **Optometrist License No. 11482**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about August 7, 2000, the State Board of Optometry issued Optometrist
22 License Number 11482 to Mai-Anh Chtn Nguyen (Respondent). The Optometrist License was in
23 full force and effect at all times relevant to the charges brought in this Accusation will expire on
24 February 28, 2014.

25 **JURISDICTION**

26 3. This Accusation is brought before the State Board of Optometry (Board), Department
27 of Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive a board of jurisdiction to proceed with a disciplinary action during the period when a license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 810 of the Code states, in pertinent part:

"(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

"(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

"(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim."

6. Section 3105 of the Code states:

"Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section."

7. Section 3106 of the Code states:

"Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

8. Section 3110 of the Code states, in pertinent part:

"The board may take action against any licensee who is charged with unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

...

1 "(e) The commission of fraud, misrepresentation, or any act involving dishonesty or
2 corruption, that is substantially related to the qualifications, functions, or duties of an
3 optometrist."

4 **COST RECOVERY**

5 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 **FACTS**

12 10. On April 1, 2010, the insurance company Vision Service Plan (VSP) conducted an
13 audit that revealed Respondent submitted \$165,560 in claims that Respondent could not
14 substantiate, with one or more of the following discrepancies found in 57 of the 111 records that
15 VSP reviewed:

16 A. Respondent used unused benefits from patients' family members to cover the cost of
17 materials and overages for the patients themselves;

18 B. Respondent billed for comprehensive exams without documentation that Respondent
19 provided the exams;

20 C. Respondent billed for comprehensive exams when Respondent had only documented
21 a refraction or other minimal testing;

22 D. Respondent billed for contact lens fittings and materials without documenting she had
23 provided the fittings and materials;

24 E. Respondent billed for contact lenses when the patient received sunglasses;

25 F. In many instances, Respondent had no record of having ordered and dispensed
26 materials for which she had billed; and

27 G. Respondent billed for services as having been provided in a different year than they
28 were in fact provided.

1 **FIRST CAUSE FOR DISCIPLINE**
2 **(Unprofessional Conduct: Insurance Fraud)**
3 **(Bus. & Prof. Code § 810, subds. (a)(1) and (a)(2))**

4 11. Respondent has subjected her Optometrist License to discipline under Code section
5 810, subdivisions (a)(1) and (a)(2) because she engaged in unprofessional conduct as a health care
6 professional by knowingly presenting false or fraudulent claims for the payment of a loss under a
7 contract of insurance and knowingly preparing writings to be used in support of such false or
8 fraudulent claims. The circumstances are described in Paragraph 10 and its subparts above.

9 **SECOND CAUSE FOR DISCIPLINE**
10 **(Unprofessional Conduct: False Medical Record)**
11 **(Bus. & Prof. Code § 3105)**

12 12. Respondent has subjected her Optometrist License to discipline under Code section
13 3105 because she engaged in unprofessional conduct by altering or modifying the medical record
14 of her patients, with fraudulent intent, or creating any false medical record, with fraudulent intent.
15 The circumstances are described in Paragraph 10 and its subparts above.

16 **THIRD CAUSE FOR DISCIPLINE**
17 **(Unprofessional Conduct: False Document Related to Optometry)**
18 **(Bus. & Prof. Code § 3106)**

19 13. Respondent has subjected her Optometrist License to discipline under Code section
20 3106 because she engaged in unprofessional conduct by knowingly making or signing any
21 certificate or other document directly or indirectly related to the practice of optometry that falsely
22 represented the existence or nonexistence of a state of facts. The circumstances are described in
23 Paragraph 10 and its subparts above.

24 **FOURTH CAUSE FOR DISCIPLINE**
25 **(Unprofessional Conduct: Fraud, Misrepresentation or Dishonesty)**
26 **(Bus. & Prof. Code § 3110, subd. (e))**


27 14. Respondent has subjected her Optometrist License to discipline under Code section
28 3110, subdivision (e), because she engaged in unprofessional conduct by committing fraud,
misrepresentation, or any act involving dishonesty or corruption, that is substantially related to
the qualifications, functions, or duties of an optometrist. The circumstances are described in
Paragraph 10 and its subparts above.

PRAYER

THEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the State Board of Optometry issue a decision:

1. Revoking or suspending Optometrist License Number 11482, issued to Mai-Anh Chtn Nguyen;
2. Ordering Mai-Anh Chtn Nguyen to pay the State Board of Optometry the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: February 12, 2013


MONA MAGGIO
Executive Officer
State Board of Optometry
Department of Consumer Affairs
State of California
Complainant

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